

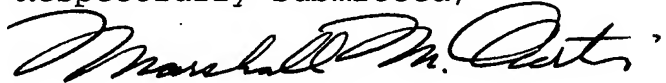
*prima facie* demonstration of distinctness of the inventions identified. While the Examiner's statement of the criterion for demonstrating distinctness is correct, the Examiner has suggested "a conventional CVD method" for deposition of the first claimed layer as a materially different method (from the plasma enhanced CVD method of dependent claim 3) for making the device. it is respectfully pointed out, however, that independent claim 1 is not so limited and the method suggested by the Examiner clearly falls within the scope of at least independent claim 1. Therefore, it logically follows that the Examiner's suggested method cannot be materially distinct from the method claimed for the simple reason that it falls within the scope of the (elected) method claims. Accordingly, the Examiner's suggestion cannot support a *prima facie* demonstration of distinctness.

As the Examiner is aware, demonstrations of *both* distinctness of inventions and the existence of a serious burden must be made to support a requirement for restriction. Since a *prima facie* demonstration of distinctness has not, in fact, been made, it is respectfully submitted that the requirement is without basis and contrary to the established policy of the USPTO as enunciated in the MPEP. Accordingly, it is respectfully requested that the requirement for restriction be reconsidered and withdrawn.

Since all requirements contained in the outstanding official action have been fully answered and shown to be in error, it is respectfully submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 09-0458 of International Business Machines Corporation (E. Fishkill).

Respectfully submitted,



Marshall M. Curtis  
Reg. No. 33,138

Whitham, Curtis & Christofferson, P. C.  
11491 Sunset Hills Road, Suite 340  
Reston, Virginia 20190

(703) 787-9400  
Customer Number: **30743**